IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9450 OF 2005

Ganpat Krushna Gophane .. Petitioner

Versus

Tanaji Damu Navale & Ors. .. Respondents

Ms.Bhadadare i/b. P.R.Arjunwadkar for petitioner

Mr.A.A.Joshi for respondent Nos. 1 to 3.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 23rd February 2006.

P.C.

. Heard Ms.Bhadadare for petitioner and Mr.Joshi for respondent Nos. 1 to 3. Petitioner applied before lower appellate court in an appeal

which has been preferred by the respondent Nos. 1 to 3 to challenge the judgement and decree in Regular Civil Suit No.338 of 2000. Appeal No.156 of 2003 which is preferred by these respondents impleads 4th respondent original plaintiff as party respondent.

2. The property in question is described in para 6 of this petition. It is the case of petitioner, applicant, who preferred application (Exh.25) that subject matter of the suit has been sold by respondent original plaintiff by registered sale deed dated 2nd June 2005 during the pendency of the appeal to the petitioner, third party - applicant and he has been placed in possession of the same. In these circumstances, he may be impleaded as respondent No.4 in place of original respondent No.4 plaintiff, more so, as he may not be interested in prosecuting the appeal. Respondent Nos. 1 to 3 - original appellants objected to this application by

contending that the presence of petitioner is not necessary and that the cause of action accrued to original plainiff on 1st July 2002 and the third party cannot claim any interest in the suit property.

3. In my view, such an application which really avoids multiplicity of proceedings and which enables the court below to effectively and completely adjudicate upon the controversy should not have been rejected. It is not as if by mere permission to prosecute the appeal confers any right or benefit on the petitioner applicant in respect of the suit property. It is the petitioner applicant who has stepped into the shoes of original plaintiff but it is always open for respondent Nos. 1 to 3 to point out that the cause of action accrued in favour of original plaintiff and no benefit can be derived by the applicant third party by the suit being allowed.

4. Leaving all such contentions open for both sides to be urged in the pending appeal, application preferred by petitioner is allowed. Regular Civil appeal to be amended. Amendments to be carried out within two weeks and thereafter the appeal to proceed in accordance with law. Petition disposed of.

(S.C.DHARMADHIKARI, J)